

**DEPARTMENT OF SOCIAL SERVICES**

744 P Street, Sacramento, California 95814



October 3, 2005

TO: IN-HOME SUPPORTIVE SERVICES (IHSS) REGULATIONS  
WORKGROUP PARTICIPANTS AND IHSS STAKEHOLDERS

FROM: EILEEN CARROLL, Bureau Chief, Adult Programs Operation Bureau  
JANICE LINDSAY, San Bernardino County Dept. of Aging and Adult Services

SUBJECT: IHSS DRAFT REGULATIONS ON EMPLOYER OF RECORD

This notice transmits draft IHSS regulations for employer of record for collective bargaining purposes which has been recently developed within the Regulations Workgroup.

The draft regulations for employer of record for collective bargaining purposes were shared with the participants of the September 22nd meeting. While we have received some comments/suggestions and have incorporated a few to these regulations, we have asked the Regulations Workgroup to provide their input to the Adult Programs Branch. These draft regulations are currently under discussion and review. For those not in the Regulations Workgroup please provide any comments on these draft regulations by October 27, 2005. We expect to continue our discussions with the Overall IHSS subcommittee this Fall and review with the full Regulations Workgroup in 2006.

**IHSS REGULATIONS:****Employer of Record for Collective Bargaining Purposes**

Thank you for your participation.

**REGULATIONS FOR AB 1682 EMPLOYER OF RECORD**  
***DRAFT 09/22/05***

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SOCIAL SERVICES STANDARDS		
<b>Regulations</b>	<b>SERVICE PROGRAM NO. 7: IN-HOME SUPPORT SERVICES</b>	<b>30-701</b>

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<b>30-701</b>	<b>SPECIAL DEFINITIONS</b>	<b>30-701</b>
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- (a) (1) Administrative costs are those costs necessary for the proper and efficient administration of the county IHSS program as defined below. Activities considered administrative in nature include, but are not limited to:
- (A) Determine eligibility;
  - (B) Conduct needs assessments;
  - (C) Give information and referrals;
  - (D) Establish case files;
  - (E) Process Notices of Action;
  - (F) Arrange for services;
  - (G) Compute shares of cost;
  - (H) Monitor and evaluate contractor performance;
  - (I) Respond to inquiries;
  - (J) Audit recipient and individual provider timesheets;

# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

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SOCIAL SERVICES STANDARDS		
30-701 (Cont.)	SERVICE PROGRAM NO. 7: IN-HOME SUPPORT SERVICES	Regulations

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**30-701 SPECIAL DEFINITIONS (Continued) 30-701**

- (K) Enter case and payroll information into the CMIPS;
- (L) Screen potential providers and maintain a registry or list.
- (2) Administrative activities for PCSP are those activities necessary for the proper and efficient administration of the county PCSP. In addition to all activities listed in Section 30-753(a)(1) as administrative activities for IHSS except Section 30-753(a)(1)(G), the following activities are considered administrative in nature, subject to PCSP funding:
  - (A) Nursing supervision;
  - (B) Clerical staff directly supporting nursing supervision of PCSP cases;
  - (C) Physician certification of medical necessity when such certification is completed by a licensed health care professional who is a county employee;
  - (D) Provider enrollment certification.
- (3) Advisory Committee means an IHSS advisory committee that is appointed by each county's board of supervisors pursuant to Welfare and Institutions Code Section 12301.3. An advisory committee shall be constituted as described in MPP 30-767.
- ~~(3)~~ (4) Allocation means federal, state, and county monies which are identified for a county by the Department for the purchase of services in the IHSS Program.
- (b) (1) Base Allocation means all federal, state and county monies identified for counties by the Department for the purchase of services in the IHSS Program, exclusive of any provider COLA allocation, but including recipient COLA.
- (2) Base Rate means the amount of payment per unit of work before any premium is applied for overtime or related extraordinary payments.
- (c) (1) Certified Long-Term Care Insurance Policy or Certificate or certified policy or certificate means any long-term care insurance policy or certificate, or any health care service plan contract covering long-term care services, which is certified by the California Department of Health Services as meeting the requirements of Welfare and Institutions Code Section 22005.
- (2) Compensable services are only those services for which a provider could legally be paid under the statutes.
- ~~(3) Consumer means an individual who is a current or past user of personal care services, as defined by Section 30-757.14, paid for through public or private funds or a recipient of IHSS or PCSP.~~
- (4) County Plan means the annual plan submitted to the California Department of Social Services specifying how the county will provide IHSS and PCSP.

# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

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SOCIAL SERVICES STANDARDS		
Regulations	SERVICE PROGRAM NO. 7: IN-HOME SUPPORT SERVICES	30-701 (Cont.)

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## **30-701 SPECIAL DEFINITIONS (Continued) 30-701**

- (5) CRT or Cathode Ray Tube means a device commonly referred to as a terminal which is used to enter data into the IHSS payrolling system.
- (6) CRT County means a county in which one or more CRTs have been located allowing the county to enter its data directly into the payrolling system.
- (d) (1) Deeming means procedures by which the income and resources of certain relatives, living in the same household as the recipient, are determined to be available to the recipient for the purposes of establishing eligibility and share of cost.
- (2) Designated county department means the department designated by the county board of supervisors to administer the IHSS program.
- (3) Direct advance payment means a payment to be used for the purchase of authorized IHSS which is sent directly to the recipient in advance of the service actually being provided.
- (e) (1) Employee means the provider of IHSS under the individual delivery method as defined in Section 30-767.13.
- ~~(2) Employer means the recipient of IHSS when such services are purchased under the individual delivery method as defined in Section 30-767.13.~~
- (2) Employer means the following:
  - (A.) The recipient of IHSS is the employer for purposes of selecting, hiring, changing, firing, supervising and training their provider, with the following exception; in Contract Mode, the contract mode agency is the employer for hiring or firing the agency's IHSS providers.
  - (B.) Depending upon the mode and method of service, the county, the public authority, the nonprofit consortium or the contract mode agency is the employer for collective bargaining for wages and benefits, and for matters relating to employment conditions and employer-employee relations as stated under Government Code 3500 et. seq. Otherwise known as employer of record.
  - (C.) The state is the employer for purposes of the state payrolling system, administering for the recipient unemployment compensation, unemployment compensation disability compensation, workers' compensation, disability benefits, federal and state income tax, federal old-age survivors and disability insurance benefits as described in WIC 12302.2.

**REGULATIONS FOR AB 1682 EMPLOYER OF RECORD**  
***DRAFT 09/22/05***

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<b>30-701 (Cont.)</b>	<b>SOCIAL SERVICES STANDARDS</b> <b>SERVICE PROGRAM NO. 7: IN-HOME SUPPORT SERVICES</b>	<b>Regulations</b>
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**30-701      SPECIAL DEFINITIONS (Continued)      30-701**

- (e)    (3)    Equity Value means a resource's current market value after subtracting the value of any liens or encumbrances against the resources which are held by someone other than the recipient or his/her spouse.
  
- (f)            (Reserved)
  
- (g)            Gatekeeper Client means a person eligible for, but not placed in a skilled or intermediate care facility as a result of preadmission screening.
  
- (h)    (1)    Hours Worked means the time during which the provider is subject to the ~~control~~ direction and supervision of the recipient, and includes all the time the provider is required or permitted to work, exclusive of time spent by the provider traveling to and from work.
  
- (2)    Housemate means a person who shares a living unit with a recipient. An able and available spouse or a live-in provider is not considered a housemate.
  
- (i)    (1)    "Intercounty Transfer" means a transfer of responsibility for the provision of IHSS services from one county to another when the recipient moves to a new county and continues to be eligible for IHSS:
  - (A)    "Transferring County" means the county currently authorizing IHSS services.
  - (B)    "Receiving County" means the county to which the recipient moves to make his/her home.
  - (C)    "Transfer Period" means the period during which the transferring county remains responsible for payment of IHSS services, after which the receiving county will be responsible for payment. The transfer period starts when the transferring county sends the documentation, including the notice of transfer form, and records to the receiving county.
  - (D)    "Expiration of Transfer Period" means the end of the transfer period. The transfer period shall end as soon as administratively possible but no later than the first day of the month following 30 calendar days after the notification of transfer form is sent to the receiving county or as allowed in Section 30-759.96.

# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

*DRAFT 09/22/05*

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		SOCIAL SERVICES STANDARDS
Regulations	SERVICE PROGRAM NO. 7: IN-HOME SUPPORT SERVICES	30-701 (Cont.)

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**30-701 SPECIAL DEFINITIONS (Continued) 30-701**

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**HANDBOOK BEGINS HERE**

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- (E) Example: The transferring county sends a notification of transfer form along with documents to the receiving county on January 20th.

The receiving county has 30 calendar days to return the transfer form. The receiving county returns the transfer form on February 19th, stating that they will assume responsibility effective March 1st.

- The transfer period begins January 20th.

- The transfer period ends on March 1st. IHSS payment is terminated by the transferring county.

- The receiving county begins IHSS payment effective March 1st and the transfer is complete.

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**HANDBOOK ENDS HERE**

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(j) (Reserved)

(k) (Reserved)

(l) (1) Landlord/Tenant Living Arrangement means a shared living arrangement considered to exist when one housemate, the landlord, allows another, the tenant, to share housing facilities in return for a monetary or in-kind payment for the purpose of augmenting the landlord's income. A landlord/tenant arrangement is not considered to exist between a recipient and his/her live-in provider. Where housemates share living quarters for the purpose of sharing mortgage, rental, and other expenses, a landlord tenant relationship does not exist, though one housemate may customarily collect the payment(s) of the other housemate(s) in order to pay mortgage/rental payments in a lump sum.

(2) Licensed Health Care Professional means a person who is a physician as defined and authorized to practice in this state in accordance with the California Business and Professions Code.

(3) Live-In Provider means a provider who is not related to the recipient and who lives in the recipient's home expressly for the purpose of providing IHSS-funded services.

# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

**DRAFT 09/22/05**

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## SOCIAL SERVICES STANDARDS

**30-701 (Cont.)**

**SERVICE PROGRAM NO. 7: IN-HOME SUPPORT SERVICES**

**Regulations**

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**30-701 SPECIAL DEFINITIONS (Continued) 30-701**

- (4) A list means any informal or formal listing or registry of written name(s) of prospective In-Home Support Services providers maintained by the county social services agency, county social services staff, a contractor as defined under Welfare and Institutions Code Section 12302.1, the public authority, the non-profit consortium, or any public or private agency for purposes of referring the prospective providers for employment.
- (m) Minor means any person under the age of eighteen who is not emancipated by marriage or other legal action.
- (n) (1) Net Nonexempt Income means income remaining after allowing all applicable income disregards and exemptions.
- (2) Nonprofit consortium means a nonprofit public benefit corporation that has all powers necessary to carry out the delivery of in-home supportive services. A nonprofit consortium has a tax-exempt status and produces a tax exempt status certificate and meets the definition of a nonprofit organization as contained in OMB Circular A-122 found at Federal Register, Vol. 45, No. 132, dated July 8, 1980.

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### HANDBOOK BEGINS HERE

- (A) OMB Circular A-122 found at Federal Register, Vol. 45, No. 132, dated July 8, 1980, defines a nonprofit organization as one which:
  - (1) Operates in the public interest for scientific, educational, service or charitable purposes;
  - (2) Is not organized for profit making purposes;
  - (3) Is not controlled by or affiliated with an entity organized or operated for profit making purposes; and
  - (4) Uses its net proceeds to maintain, improve or expand its operations.

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### HANDBOOK ENDS HERE

- (o) (1) Out-of-Home Care Facility means a housing unit other than the recipient's own home, as defined in (o) (2) below. Medical out-of-home care facilities include acute care hospitals, skilled nursing facilities, and intermediate care facilities. Nonmedical out-of-home care facilities include community care facilities and homes of relatives which are exempt from licensure, as specified in Section 46-325.5, where recipients are certified to receive board and care payment level from SSP.
- (2) Own Home means the place in which an individual chooses to reside. An individual's "own home" does not include an acute care hospital, skilled nursing facility, intermediate care facility, community care facility, or a board and care facility. A person receiving an SSI/SSP payment for a nonmedical out-of-home living arrangement is not considered to be living in his/her home.

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## CALIFORNIA-DSS-MANUAL-SS

**MANUAL LETTER NO. SS-98-01**

**Effective 11/14/98**

# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

**DRAFT 09/22/05**

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	<b>SOCIAL SERVICES STANDARDS</b>	
<b>Regulations</b>	<b>SERVICE PROGRAM NO. 7: IHSS</b>	<b>30-701 (Cont.)</b>

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**30-701 SPECIAL DEFINITIONS (Continued) 30-701**

- (p) (1) Paper County means a county which sends its data in paper document form for entry into the payrolling system to the IHSS payrolling contractor.
- (2) Payment Period means the time period for which wages are paid. There are two payment periods per month corresponding to the first of the month through the fifteenth of the month and the sixteenth of the month through the end of the month.
- (3) Payrolling System means a service contracted for by the state with a vendor to calculate paychecks to individual providers of IHSS; to withhold the appropriate employee taxes from the provider's wages; to calculate the employer's taxes; and to prepare and file the appropriate tax return.
- (4) Personal Attendant means a provider who is employed by the recipient and, as defined by 29 CFR 552.6, who spends at least eighty percent of his/her time in the recipient's employ performing the following services:
- (A) Preparation of meals, as provided in Section 30-757.131.
  - (B) Meal clean-up, as provided in Section 30-757.132.
  - (C) Planning of menus, as provided in Section 30-757.133.
  - (D) Consumption of food, as provided in Section 30-757.14(c).
  - (E) Routine bed baths, as provided in Section 30-757.14(d).
  - (F) Bathing, oral hygiene and grooming, as provided in Section 30-757.14(e).
  - (G) Dressing, as provided in Section 30-757.14(f).
  - (H) Protective supervision, as provided in Section 30-757.17.
- (5) Preadmission Screening means personal assessment of an applicant for placement in a skilled or intermediate care facility, prior to admission to determine the individual's ability to remain in the community with the support of community-based services.
- (6) Provider Cost-of-Living Adjustment (COLA) means all federal, state and county monies identified for counties by SDSS for the payment of wage and/or benefit increases for service providers in the IHSS program.



**REGULATIONS FOR AB 1682 EMPLOYER OF RECORD**  
***DRAFT 09/22/05***

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<b>30-701 (Cont.)</b>	<b>SOCIAL SERVICES STANDARDS SERVICE PROGRAM NO. 7: IHSS</b>	<b>Regulations</b>
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**30-701 SPECIAL DEFINITIONS (Continued) 30-701**

- (7) Public Authority means:
  - (A) An entity established by the board of supervisors by ordinance, separate from the county, which has filed the statement required by Section 53051 of the Government Code, and
  - (B) A corporate public body, exercising public and essential governmental functions and that has all powers necessary and convenient to carry out the delivery of in-home supportive services, including the power to contract for services and make or provide for direct payment to a provider chosen by a recipient for the purchase of services.
- (q) (Reserved)
- (r) (1) Recipient means a person receiving IHSS, including applicants for IHSS when clearly implied by the context of the regulations. Recipient is equivalent to Client, Consumer and Beneficiary.
- (2) Reduced payment means any payment less than full payment that may be due.
- (s) (1) Severely Impaired Individual means a recipient with a total assessed need, as specified in Section 30-763.5, for 20 hours or more per week of service in one or more of the following areas:
  - (A) Any personal care service listed in Section 30-757.14.
  - (B) Preparation of meals.
  - (C) Meal cleanup when preparation of meals and consumption of food (feeding) are required.
  - (D) Paramedical services.
- (2) Shared Living Arrangement means a situation in which one or more recipients reside in the same living unit with one or more persons. A shared living arrangement does not exist if a recipient is residing only with his/her able and available spouse.
- (3) Share of cost means an individual's net non-exempt income in excess of the applicable SSI/SSP benefit level which must be paid toward the cost of IHSS authorized by the county.

# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

**DRAFT 09/22/05**

SOCIAL SERVICES STANDARDS	
SERVICE PROGRAM NO. 7: IHSS	
Regulations	30-701
<b>30-701</b>	<b>SPECIAL DEFINITIONS (Continued) 30-701</b>

- (4) Spouse means a member of a married couple or a person considered to be a member of a married couple for SSI/SSP purposes. For purposes of Section 30-756.11 for determining PCSP eligibility, spouse means legally married under the laws of the state of the couple's permanent home at the time they lived together.
- (5) SSI/SSP means the Supplemental Security Income and State Supplementary Program administered by the Social Security Administration of the United States Department of Health and Human Services in California.
- (6) State Allocation Plan means that process whereby individual county IHSS program allocations are developed in a manner consistent with a) Welfare and Institutions Code Sections 10102 and 12300 et seq., and b) funding levels appropriated and any control provision contained in the Annual Budget Act.
- (7) State-mandated program cost means those county costs incurred for the provision of IHSS to recipients, as specified in Section 30-757, in compliance with a state approved county plan. Costs caused by factors beyond county control such as caseload growth, mandated increases in the state minimum wage and increased hours of service based on individually assessed need, shall also be considered state-mandated.
- (8) Substantial Gainful Activity means work activity that is considered to be substantial gainful activity under the applicable regulations of the Social Security Administration, 20 CFR 416.932 through 416.934. Substantial work activity involves the performance of significant physical or mental duties, or a combination of both, productive in nature. Gainful work activity is activity for remuneration of profit, or intended for profit, whether or not profit is realized, to the individual performing it or to the persons, if any, for whom it is performed, or of a nature generally performed for remuneration or profit.
- (9) Substitute Payee means an individual who acts as an agent for the recipient.
- (t) Turnaround Timesheet means a three-part document issued by the state consisting of the paycheck, the statement of earnings, and the timesheet to be submitted for the next pay period.
- (u) (Reserved)
- (v) (1) Voluntary Services Certification is the form numbered SOC 450 (10/98) which is incorporated by reference and which is to be used statewide by person(s) providing voluntary services without compensation.
- (w) (Reserved)

**REGULATIONS FOR AB 1682 EMPLOYER OF RECORD**  
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<b>Regulations</b>		<b>SOCIAL SERVICES STANDARDS</b>	
		<b>SERVICE PROGRAM NO. 7: IHSS</b>	
<b>30-701</b>	<b>SPECIAL DEFINITIONS (Continued)</b>	<b>30-701</b>	<b>30-701</b>

(x) (Reserved)

(y) (Reserved)

(z) (Reserved)

NOTE: Authority cited: Sections 10553, 10554, 12301.1, and 22009(b), Welfare and Institutions Code; and Chapter 939, Statutes of 1992. Reference: Sections 10554, 11102, 12300(c), 12301, 12301.6, 12304, 12306, 12308, 13302, 14132.95, 14132.95(e), 14132.95(f), and 22004, Welfare and Institutions Code.

# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

**DRAFT 09/22/05**

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SOCIAL SERVICES STANDARDS		
30-759	SERVICE PROGRAM NO. 7: IN-HOME SUPPORT SERVICES	Regulations

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30-759	APPLICATION PROCESS	30-759
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- .1 Each request or application for services shall have been made in accordance with Section 30-009.22. Counties that have an established public authority and/or a nonprofit consortium shall refer recipients and/or potential providers to these entities for coordination of mandated services listed in Section 30-767.23.
- .11 Recipient information including ethnicity and primary language (including sign language) shall be collected and recorded in the case file.
- .2 Applications shall be processed, including eligibility determination and needs assessment, and notice of action mailed no later than 30 days following the date the written application is completed. An exception may be made for this requirement when a disability determination in accordance with Section 30-771 has not been received in the 30-day period. Services shall be provided, or arrangements for their provision shall have been made, within 15 days after an approval notice of action is mailed.
- .3 Pending final determination, a person may be considered blind or disabled for purposes of non-PCSP IHSS eligibility under the following conditions:
- .31 For a disabled applicant, eligibility may be presumed if the applicant is not employed and has no expectation of employment within the next 45 days, and if in the county's judgment the person appears to have a mental or physical impairment that will last for at least one year or end in death.
- .32 For a blind applicant, eligibility may be presumed if in the county's judgment the person appears to meet the requirements of Section 30-771.2.

# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

*DRAFT 09/22/05*

SOCIAL SERVICES STANDARDS		
Regulations	SERVICE PROGRAM NO. 7: IHSS	30-760

<b>30-760</b>	<b>RESPONSIBILITIES</b>	<b>30-760</b>
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.1 Applicant/Recipient Responsibilities

The applicant/recipient, his/her conservator, or in the case of a minor, his/her parents or guardian shall be responsible for:

- .11 Completing or participating in completion of all documents required in the determination of eligibility and need for services.
- .12 Making available to the county all documents that are in his/her possession or available to him/her which are needed to determine eligibility and need for service.
- .13 Reporting all known facts which are material to his/her eligibility and level of need.
- .14 Reporting within ten calendar days of the occurrence, any change in any of these facts.
- .15 Reporting all information necessary to assure timely and accurate payment to providers of service.
- .16 Reporting within 10 calendar days when a change of residence places the recipient within the jurisdiction of another county.
- .17 As employers of providers, certain responsibilities for standards of compensation, work scheduling and working conditions as they apply to IHSS individual providers.
- .18 As employers of providers, ensure confidentiality of the personal data of providers as stated under WIC 10850 et. seq. and Government Code Section 6253.2.

.2 County Responsibilities

- .21 Informing recipients of their rights and responsibilities in relation to eligibility and need for services.
- .22 Evaluating the capacity of applicants or recipients to discharge their responsibilities as set forth in .1 above.
- .23 Assisting recipients as needed in establishing their eligibility and need for service.
- .24 Correctly determining eligibility and need.
- .25 Complying with administrative standards to insure timely processing of recipient requests for service.
- .26 Inform recipients of the recipient's responsibilities as an employer, as set forth in .17 and .18 above. The county may delegate this responsibility to its public authority or nonprofit consortium.
- .27 Ensure confidentiality of the personal data of recipients and providers as stated under WIC 10850 et. seq. and Government Code Section 6253.2.

**REGULATIONS FOR AB 1682 EMPLOYER OF RECORD**  
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NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code; and Chapter 939, Statutes of 1992. Reference: Sections 11102, 12301, and 14132.95, Welfare and Institutions Code.

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**CALIFORNIA-DSS-MANUAL-SS**

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# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

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SOCIAL SERVICES STANDARDS		
Regulations	SERVICE PROGRAM NO. 7: IN-HOME SUPPORT SERVICES	30-764 (Cont.)

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<b>30-764</b>	<b>INDIVIDUAL PROVIDER COMPENSATION</b>	<b>30-764</b>
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.1 Computation of Payment

- .11 County ~~S~~ocial service staff shall determine the amount of the IHSS payment required to purchase services to meet the recipient's IHSS adjusted need by multiplying the authorized IHSS hours by the rate of compensation, except as provided in .13 below ~~as specified in 763.41 above.~~
- .12 ~~The IHSS payment shall be determined by multiplying the monthly adjusted need for IHSS hours by the base payment rate used by the county, except as provided in .14 below. The rate of compensation for providers shall be determined by the employer of record, pursuant to collective bargaining procedures with the exclusive employee representative of the provider.~~
- .13 The hours and amount of compensation available for personal attendant providers shall be determined by county social services staff. The payment shall be the minimum necessary to obtain adequate service to meet the authorized service needs of the recipient.

.2 Rate of Compensation

- .21 The base rate of compensation used by the county shall not be less than the state legal minimum wage in effect at the time the work is performed, except when personal attendants are employed.
- .22 In advance pay cases, the base rate paid by the recipient to the provider shall not be less than the base rate used by the county for the authorized IHSS payment.
- .23 The recipient shall develop a work schedule which is consistent with the authorized service hours at the county's base rate. If the recipient finds that a work schedule cannot be established without requiring payment in excess of the county's base rate, the recipient shall bring such information to the county's attention. The county will determine if payment in excess of the base rate is necessary. Any additional costs resulting from the recipient's actions in work scheduling or increasing the rate paid per work unit shall be borne by the recipient unless prior county approval has been obtained.
- .24 No adjustments in the IHSS payment shall be made for meals and lodging provided to the provider by the recipient except as specified in Section 30-763. However, any income received by the recipient through this means is countable income for eligibility purposes as specified in Section 30-775 and shall be reported as such by the recipient.

# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

*DRAFT 09/22/05*

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## SOCIAL SERVICES STANDARDS

30-764 (Cont.)

SERVICE PROGRAM NO. 7: IN-HOME SUPPORT SERVICES

Regulations

30-764

INDIVIDUAL PROVIDER COMPENSATION

30-764

~~3~~ Employer Responsibilities

~~.31 As employers recipients have certain responsibilities for standards of compensation, work scheduling and working conditions as they apply to IHSS individual providers. The county will assure that all recipients understand their basic responsibilities as employers.~~

~~.32.25~~ Non live-in employees shall be compensated at the base rate for the first forty hours worked during a work week. Each hour, or fraction thereof, worked in excess of forty hours during a work week shall be compensated at one and one-half times the base rate.

~~.4 The county may change the payment method from advance payment to payment in arrears when any of the following apply:~~

~~(a) It has been determined that a recipient is using his/her payment for other than the purchase of authorized services.~~

~~(b) The recipient has failed to submit time sheets, as specified in Section 30-769.737 within 90 days from the date of payment.~~

~~(c) The recipient has not provided timely payment to his/her providers.~~

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### HANDBOOK BEGINS HERE

\*\*Review statute to determine a timeframe that a recipient is required to receive payments in arrears prior to re-applying for payment in advance.

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Effective 7/1/93

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# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

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## SOCIAL SERVICES STANDARDS

**Regulations**

**SERVICE PROGRAM NO. 7: IN-HOME SUPPORT SERVICES**

**30-765 (Cont.)**

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### **30-765 COST LIMITATIONS**

**30-765**

- .1 The following limitations shall apply to all payments made for in-home supportive services:
- .11 The maximum services authorized per month except as provided in Section 30-765.3, under IHSS to any recipient determined to be severely impaired, as defined in Section 30-753(s)(1) shall be that specified in Welfare and Institutions Code Section 12303.4(b) or as otherwise provided by law.

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#### **HANDBOOK BEGINS HERE**

- .111 The IHSS service hours for a severely impaired recipient receiving services through the individual provider mode of delivery shall not exceed 283 hours per month effective July 8, 1988. (Welfare and Institutions Code Section 12303.4(b)(1)).
- .112 Repealed by CDSS Manual Letter No. SS-00-02, effective 4/14/00.
- .113 Welfare and Institutions Code Section 12300(g)(2) states:
- "Any recipient receiving services under both Section 14132.95 and this article shall receive no more than 283 hours of service per month, combined, and any recipient of services under this article shall receive no more than the applicable maximum specified in Section 12303.4." (See Section 30-765.11.)

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#### **HANDBOOK ENDS HERE**

- .12 The maximum services authorized per month except as provided in Section 30-765.3, under non-PCSP to any recipient determined not to be severely impaired shall be that specified in Welfare and Institutions Code Section 12303.4(a) or as otherwise provided by law.

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#### **HANDBOOK BEGINS HERE**

- .121 The IHSS service hours for a recipient who is not determined to be severely impaired and receives services through the individual provider mode of service delivery shall not exceed 195 hours per month effective July 8, 1988 (Welfare and Institutions Code Section 12303.4(a)(1)).
- .122 Repealed by CDSS Manual Letter No. SS-00-02, effective 4/14/00.

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30-765 (Cont.)	SOCIAL SERVICES STANDARDS SERVICE PROGRAM NO. 7: IHSS	Regulations
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<b>30-765</b>	<b>COST LIMITATIONS</b> (Continued)	<b>30-765</b>
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- .13 The statutory maximum service hours per month shall be inclusive of any payment by IHSS for a restaurant meal allowance established in accordance with the Welfare and Institutions Code Section 12303.7.
- .131 The statutory maximum for individuals receiving services through the individual provider mode of service delivery and eligible for the restaurant meal allowance shall be determined by multiplying the statutory maximum hours of service by the county wage rate, subtracting the restaurant meal allowance (see Section 30-757.134(a)(1)(A)) from this product and dividing the remainder by the county hourly wage rate.
- .132 Repealed by CDSS Manual Letter No. SS-00-02, effective 4/14/00.
- .14 The county shall not make monthly payments of IHSS monies to recipients in excess of the computed maximums in Sections 30-765.11, .12 and .13. The sum of the IHSS monthly payment and the recipient's share of cost, if any, shall not exceed the appropriate maximum.
- .2 The statewide wage rate for individual providers shall be determined by the State Budget Act, Department. ~~Effective July 8, 1988, the statewide wage rate is \$4.25. Wage rates for IHSS providers established by an employer of record may vary from the statewide wage rate.~~

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~~.21 DHS regulation Section 51535.2 reads:~~

~~Reimbursement Rates for Personal Care Services Program:~~

- ~~(a) For the individual provider mode for providing personal care services, the reimbursement rate shall be a maximum of \$5.50 per hour of service; provided, however, that the reimbursement rate in each county shall not exceed the rate in each county for the individual provider mode of service in the IHSS program pursuant to Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code, as it existed on September 28, 1992.~~

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## HANDBOOK CONTINUES

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Regulations	SOCIAL SERVICES STANDARDS SERVICE PROGRAM NO. 7: IHSS	30-765 (Cont.)
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**30-765**      **COST LIMITATIONS** (Continued)      **30-765**

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## HANDBOOK CONTINUES

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(b) ~~For the contract mode for providing personal care services pursuant to Welfare and Institutions Code Sections 12302 and 12302.1, the reimbursement rates shall be those specified in the contract between the county and the agency contractor not to exceed the following maximum rates for services provided through State fiscal year 1993-1994 as follows:~~

(1) Butte	\$ 9.65
(2) Nevada	\$10.34
(3) Riverside	\$12.29
(4) San Diego	\$10.49
(5) San Francisco	\$12.28
(6) San Joaquin	\$ 9.50
(7) San Mateo	\$12.65
(8) Santa Barbara	\$11.76
(9) Santa Clara	\$11.11
(10) Santa Cruz	\$13.61
(11) Stanislaus	\$10.51
(12) Tehama	\$11.30
(13) Ventura	\$11.04

~~(c)(a)~~ Nothing in this section is intended to be a limitation on the rights of providers and beneficiaries or on the duties of the Department of Social Services, pursuant to Welfare and Institutions Code Section 12302.2 subdivision (a). Contributions, premiums and taxes paid pursuant to Welfare and Institutions Code Section 12302.2, subdivision (a) shall be in addition to the hourly rates specified in subdivision (a) of this section the statewide wage rate.

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# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

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	<b>SOCIAL SERVICES STANDARDS</b>	
<b>30-765 (Cont.)</b>	<b>SERVICE PROGRAM NO. 7: IHSS</b>	<b>Regulations</b>

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**30-765      COST LIMITATIONS (Continued)      30-765**

- .3      IHSS recipients receiving services through the individual provider mode of delivery shall not receive less service hours per month than he/she received during June 1988, without a reassessment of need. The reassessment shall not result in an automatic reduction in authorized hours, unless the recipient no longer needs the hours.
- ~~.4      These regulations shall remain in effect until July 1, 1990, unless a later enacted regulation extends or repeals that date.~~

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Chapter 939, Statutes of 1992. Reference: Sections 12300, 12303.4, and 14132.95, Welfare and Institutions Code.

# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

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	<b>SOCIAL SERVICES STANDARDS</b>	
<b>30-767 (Cont.)</b>	<b>SERVICE PROGRAM NO. 7: IHSS</b>	<b>Regulations</b>

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## **30-767 SERVICE DELIVERY MODES AND METHODS**

**30-767**

- .1 The county shall arrange for the provision of IHSS through one or more of the modes ~~methods~~ specified below in accordance with an approved county plan:

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Counties may choose modes of delivery that best meet the needs of their recipient population in their county demographic situation (WIC 12302). However, state reimbursement can be available only within the constraints imposed by the annual budget act (WIC 12300) and state allocation plan (WIC 10102), all of which must be reflected in state-approved individual county plans. Counties which exceed the constraints run the risk of not receiving full reimbursement if the cost overrun was due to non-state mandated costs, i.e., costs within county control, or more expensive modes used beyond amounts approved in an individual county plan.

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30-767 (Cont.)	SOCIAL SERVICES STANDARDS SERVICE PROGRAM NO. 7: IHSS	Regulations
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<b>30-767</b>	<b>SERVICE DELIVERY <u>MODES AND METHODS</u></b> (Continued)	<b>30-767</b>
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- .11 Homemaker Mode: County Employment Employs Service Provider.
- .111 The county shall be permitted to hire service providers in accordance with established county civil service requirements or merit system requirements. The county shall be permitted to consider such providers as temporary employees if approved by the appropriate civil service system.
- .112 The county shall insure that each service provider is capable of and is providing the services authorized.
- .12 Contract Mode: Purchase of Service from an Agency.
- .121 A county may contract with an agency to provide service in accordance with the requirements of Division 10 and 23. The contract shall include a provision requiring the contractor to maintain a listing of contract recipients, their authorized hours, service hours provided and the amount paid for those services to the contract agency.
- .122 The county shall insure that the contractor guarantees the continuity and reliability of service to recipients, supervision of service providers, that each service provider is capable of and is providing the service authorized and complies with the requirements of Division 21 (Civil Rights).
- .123 The county shall insure that preference is given to the selection of providers who are recipients of public assistance or other low-income persons who would qualify for public assistance in the absence of such employment, except in regard to persons recruited by the recipient.
- .13 Individual Provider (IP) Mode: Purchase of Service From An Individual.
- .131 The ~~state county~~ shall make payment under this delivery method through the payroll system as described in Section 30-769.
- .132 The county and the employer of record shall make a reasonable effort to assist the recipient to obtain a service provider when the recipient is unable to obtain one individually.
- ~~.133 The county shall have the right to change from one to another of the three delivery methods outlined above or from payment in advance to payment in arrears when any of the following apply:~~
- ~~(a) It has been determined that a recipient is using his/her payment for other than the purchase of authorized services.~~
- ~~(b) The recipient has failed to submit time sheets, as specified in Section 30-769.737 within 90 days from the date of payment.~~
- ~~(c) The recipient has not provided timely payment to his/her providers.~~

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Regulations	SOCIAL SERVICES STANDARDS SERVICE PROGRAM NO. 7: IHSS	30-767 (Cont.)
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30-767	<b>SERVICE DELIVERY <u>MODES AND METHODS</u></b> (Continued)	30-767
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- .14 The county may choose to offer services through mixed modes consisting of more than one mode of service.
- .15 The county shall have the right to change from one to another of the three delivery modes outlined above with the following exception.
- .151 Counties with caseloads of over 500 cases are required to provide an Individual Provider mode of service if requested by a recipient.
- .2 The county board of supervisors shall appoint an IHSS advisory committee to provide on-going advice and recommendations on the modes and methods of delivery of service.
- .21 Before appointing members to the advisory committee, the board of supervisors shall solicit recommendations from the general public and interested persons and organizations through a fair and open process which includes reasonable written notice and a reasonable time to respond.
- .22  county board of supervisors shall establish an IHSS advisory committee from the following:
- a. Individuals who are current or former recipients of IHSS services.
  - b. Individuals who are current or former providers of IHSS services.
  - c. Individuals who represent organizations that advocate for seniors or people with disabilities.
  - d. Individuals from community-based organizations that advocate on behalf of home care employees, such as provider associations.
  - e. Individuals who are county employees. No more than one county employee may be a member of the advisory committee.
- .221 When there are fewer than 500 recipients receiving IHSS/PCSP services in a county, there shall be no less than 2 and no more than 11 members on the advisory committee. The membership should include, but is not limited to:
- a. At least 1 current or former provider of IHSS.
  - b. At least 50 percent must be individuals who are current or former recipients of personal assistance services through IHSS or other similar programs.

# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

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Regulations	SOCIAL SERVICES STANDARDS SERVICE PROGRAM NO. 7: IHSS	30-767 (Cont.)
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**30-767**      **SERVICE DELIVERY MODES AND METHODS** (Continued)      **30-767**

- .222      When there are more than 500 recipients receiving IHSS/PCSP services in a county, there shall be no less than 4 and no more than 11 members on the advisory committee. The membership must include, but is not limited to:
- a. At least 2 must be current or former providers of IHSS.
  - b. At least 50 percent must be individuals who are current or former recipients of personal assistance services through IHSS or other similar programs.
- .223      The county may assist the advisory committee by designating county employees from any department to provide ongoing advice and support to the advisory committee. These county employees shall not be members of the committee, and their participation will be limited to providing advice and support.
- .23      The IHSS advisory committee shall:
- .231      Provide written recommendations on the choice of modes and methods of delivery of IHSS services to the county board of supervisors.
- .232      Provide on-going advice and recommendations on the modes and methods of delivery of IHSS services to the county board of supervisors, any administrative body in the county that is related to the delivery and administration of IHSS, and to the governing body and administrative agency of the public authority, non-profit consortium.
- .233      Meet as often as necessary, but no less than once each year, to perform advisory committee functions.
- .24      Any county that has established a governing board for its public authority pursuant to W&I Code §12301.6(b) prior to July 1, 2000 shall not be required to meet the composition requirements of MPP 30-767.22 for an IHSS advisory committee. All other counties shall be required to meet the composition requirements of MPP 30-767.22.

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### HANDBOOK BEGINS HERE

- (a) The counties that established a governing board for its public authority pursuant to W&I Code §12301.6(b) prior to July 1, 2000 are:
- 1. San Mateo
  - 2. Alameda
  - 3. San Francisco
  - 4. Santa Clara
  - 5. Contra Costa
  - 6. Los Angeles
  - 7. Sacramento
  - 8. Monterey

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**HANDBOOK ENDS HERE**

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# REGULATIONS FOR AB 1682 EMPLOYER OF RECORD

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.241  county that has an advisory committee pursuant to W&I Code § 12301.6  
(3)(C) may designate that advisory committee as the IHSS advisory committee  
required under W&I Code § 12301.3.

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Regulations	SOCIAL SERVICES STANDARDS SERVICE PROGRAM NO. 7: IHSS	30-767 (Cont.)
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30-767	SERVICE DELIVERY <u>MODES AND METHODS</u> (Continued)	30-767
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- (a) If the county chooses to use the advisory committee established under W&I Code § 12301.6 as the advisory committee required by W&I Code § 12301.3, the advisory committee must meet the composition requirements of W&I Code § 12301.3 unless the county qualifies for the exception in MPP 30-766.26.
  - (b) Each county shall be eligible to receive state reimbursements of administration cost for only one advisory committee.
  - (c) In order to be eligible to receive state reimbursement of administrative costs for an IHSS advisory committee required under W&I Code § 12301.3, the county shall take into account the advice and recommendations of the IHSS advisory committee prior to making policy and funding decisions about the program on an ongoing basis as required by W&I Code § 12302.25 (e).
- .25 The county shall reimburse expenses incurred by advisory committees and advisory committee members in support of advisory committee activities. IHSS advisory committee establishment and operation is a state mandate and allocations are provided to each county to fully fund advisory committee expenses with state and federal funds.
- .251 County employees who support IHSS advisory committee activities may charge against the IHSS advisory committee allocation provided corresponding adjustments to county payroll are made.
- .252 IHSS advisory committees expenses shall meet OMB Circular A-87 guidelines and typically may include but are not limited to, office supplies and services, training services, travel, lodging, per diem and stipend payments.
  - (a) Wage payments to advisory committee members shall not be made.
- .3 For all IHSS providers, each county shall act as, or create, an employer of record as required by W&I Code Section 12302.25 for matters relating to employment conditions and employer-employee relations, including but not limited to, purposes of collective bargaining for wages and benefits, and other terms of employment, as defined in Government Code 3500 et. seq.
- .31 The choice of modes and methods of service delivery is at the discretion of each county after receiving and considering advice and recommendations from its Advisory Committee.

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30-767	SERVICE DELIVERY <u>MODES AND METHODS</u> (Continued)	30-767
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- .311 Each county must solicit recommendations from its advisory committee for the specific modes and methods of service before acting as, or establishing, an employer for IHSS providers under W&I Code Section 12302.25(a).
- .312 The county must give the advisory committee reasonable written notice and solicit its recommendations before establishing or changing its modes or methods of service delivery.
  - (a) Reasonable written notice is defined as 60 days, in the absence of an urgent need.
  - (b) In the event of an emergency or urgent need, as defined by the County Board of Supervisors, the written notice requirement can be shortened to 10 days.
- .32 Each county must have completed the following steps by January 1, 2003.
  - .331 The county must create and have convened the IHSS advisory committee as described above.
  - .332 The county must have made the decision as to which option(s) the county will utilize to meet the employer/employee relations functions described in W&I Code 12302.25, taking into account the advice and recommendations of the IHSS advisory committee.
    - (a) If the county has chosen to establish an employer as described in W&I Code Section 12302.25, the county must have established and have operational an employer capable of fulfilling the requirements and functions set forth in Government Code Section 3500 et. Seq., and other state and federal laws.
- .33 For each of the three available modes of service, the county must complete the actions necessary to allow the mode of service to be operational by January 1, 2003.
  - .341 For the County Employment Mode to be operational, the county must complete the following in addition to the previously stated requirements.
    - (a) The county must have a Homemaker available to provide service.

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Regulations	SOCIAL SERVICES STANDARDS SERVICE PROGRAM NO. 7: IHSS	30-767 (Cont.)
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30-767	SERVICE DELIVERY <u>MODES AND METHODS</u> (Continued)	30-767
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- .342 For the Contract Mode to be operational, the county must complete the following in addition to the requirements of MPP30-767.37.
- (a) The county must have a contract in place with an entity as prescribed in W&I Code Section 12301.6 (a) which is fully functional and able to provide service.
  - (b) The contract must conform to the requirements of W&I Code Section 12302.1
- .343 For the Individual Provider (IP) mode to be operational, the county must have selected a method of service delivery under the Individual Provider Mode. The three available options are County Administration, Public Authority and Non-Profit Consortium.
- (a) For a County Administration method to be in place, the county must complete the following in addition to the previously stated requirements.
    - (1) The county must have enacted an ordinance stating its assumption of duties as administrator of the Individual Provider mode of service.
  - (b) For a Non-Profit Consortium method to be in place, the county must complete the following in addition to the previously stated requirements.
    - (1) The county must have a contract in place with a Non-Profit Consortium.
    - (2) The contract must comply with the requirements of MPP 30-767.4.
  - (c) For a Public Authority method to be in place, the county must complete the following in addition to the previously stated requirements.
    - (1) Established by local ordinance
    - (2) Have the necessary agreement with the county fully executed.
    - (3) Be staffed and operational to the extent that it can carry out the employer's responsibilities under the labor relations statutes cited.

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Regulations	SOCIAL SERVICES STANDARDS SERVICE PROGRAM NO. 7: IHSS	30-767 (Cont.)
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30-767	SERVICE DELIVERY <u>MODES AND METHODS</u> (Continued)	30-767
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.35 Counties may enter into regional agreements to fulfill the obligations of employer of IHSS providers for collective bargaining purposes.

.351 A regional agreement may apply to Individual Provider mode, but only when the mode is administered through a Public Authority method or through a Non-Profit Consortium method of service delivery.

.352 Regional Agreements may not apply to County Employment Mode.

.353 Regional Agreements may apply to Contract mode.

.36 No county is required to offer any specific mode or method of service delivery with the following exception.

.37 Nothing in this section shall be construed to restrict the ability of recipients to recruit, train, select, supervise or change providers as described in this section.

~~.4.2~~ ~~Counties may elect to contract with a nonprofit consortium or may create a public authority to provide for the delivery of IHSS. Under the Individual Provider (IP) mode, the county may establish one of these three delivery methods:~~

~~(a) the county may directly administer the delivery of service.~~

~~(b) The county may establish a public authority to administer the delivery of service.~~

~~(c) The county may contract with a nonprofit consortium to administer the delivery of service.~~

~~.41.24~~—The board of supervisors shall establish a public authority by ordinance.

~~.411.241~~—The public authority shall be separate from the county. Employees of the public authority shall not be considered to be employees of the county for any purpose.

~~.412.242~~ The ordinance shall designate the governing body of the public authority and specify the qualifications of the individual members, the procedures for nomination, selection, appointment, tenure and removal of members, and such other matters as the board of supervisors deems necessary for the operation of the public authority.

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30-767	SERVICE DELIVERY <u>MODES AND METHODS</u> (Continued)	30-767
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- (a) The board of supervisors may designate itself as the governing body of the public authority.
  - (1) If the board of supervisors is the governing body, the ordinance shall require the appointment of an advisory committee of no more than 11 members.
  - (2) No fewer than 50 percent of the advisory committee shall be consumers as defined in Manual of Policies and Procedures Section 30-753(c)(1).
- (b) If the board of supervisors does not designate itself the governing body of the public authority, it shall specify by ordinance the membership of the governing body of the public authority.
  - (1) No fewer than 50 percent of the members of the governing body shall be consumers as defined in Manual of Policies and Procedures Section 30-753(c)(1).

~~.413-213~~ Before appointing members to the governing body or advisory committee, the board of supervisors shall solicit recommendations from the general public and interested persons and organizations through a fair and open process which includes reasonable written notice and a reasonable time to respond.

- ~~(a) The provisions at Section 30-767.213.413 shall be met by satisfying the requirements governing legislative bodies outlined in Government Code and other state and federal law, including, but not limited to, the Ralph M. Brown Act (Government Code Section 54950 et seq.) and the Americans with Disabilities Act.~~

~~.414-244~~ Prior to initiating delivery of IHSS through a public authority, the county shall enter into an agreement with the public authority specifying the purposes, scope or nature of the agreement, the roles and responsibilities of each party including provisions which ensure compliance with all applicable state and federal labor laws, and compliance with all statutory and regulatory provisions applicable to the delivery of IHSS. This agreement shall also specify the fiscal provisions under which the public authority shall be reimbursed for its performance under the agreement. The county, in exercising its option to establish a public authority, shall not be subject to competitive bidding requirements.

~~.415-245~~ Prior to initiating the delivery of IHSS through a public authority, the county shall submit to the California Department of Social Services a copy of the agreement as specified in Section 30-767-244.414 along with the following information concerning the public authority:

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30-767	SERVICE DELIVERY <u>MODES AND METHODS</u> (Continued)	30-767
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- (a) Organization chart of the public authority.
- (b) Funding provision for public authority costs, including how the proposed public authority rate was developed.
  - (1.) The rate development process and the public authority hourly rate must be approved by Department of Health Services prior to initiating the delivery of services.
- (c) Public authority staffing classifications and duties.
- (d) A description of how the functional requirements of ~~Welfare and Institutions Code Section 12301.6(e)~~ MPP 30-767.23 will be met.

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- ~~(e) The requirements of Welfare and Institutions Code Section 12301.6(e) are listed in Section 30-767.23.~~

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### HANDBOOK ENDS HERE

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~~.416-216~~ If the public authority contracts with another entity to provide the delivery of IHSS under contract mode, the agreement shall satisfy the requirements of ~~Manual of Policies and Procedures Chapter 23-600 relating to contracting~~ Division 10 and 23.

~~.417-247~~ All costs claimed for the delivery of services under an agreement as specified in Section 30-767-214.414 shall be claimed in compliance with criteria for rate setting found at Section F, attachment 4.19-B of the California Medicaid State Plan.

- (a) A county shall use county-only funds to fund both the county share and the state share of any increase in the cost of the program, including employment taxes, due to any increase in provider wages or benefits negotiated or agreed to by a public authority or nonprofit consortium unless otherwise provided for in the annual budget act or appropriated by statute. No increase in wages or benefits negotiated or agreed to pursuant to this section shall take effect until the Department has obtained the approval of the State Department of Health Services.
- (b) Within seventy (70) days after the public authority is established by ordinance, the board of supervisors shall cause the information and form required by Government Code 53051 to be filed with the Secretary of State and also the county clerk of each county in which the public authority maintains an office.

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30-767	SERVICE DELIVERY <u>MODES AND METHODS</u> (Continued)	30-767
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.418 Any public authority may adopt reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization or organizations for the administration of employer-employee relations.

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(a) The Employer-Employee Relations Policy for Public Authorities Delivering In-Home Supportive Services is available from the California Department of Social Services as a model for public authorities. Public authorities may adopt, reject, or modify the policy in part or in its entirety.

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### HANDBOOK ENDS HERE

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.42-22 A county may contract with a nonprofit consortium for delivery of services.

.421-224 A nonprofit consortium entering into a contract under this section ~~Section 30-767-22~~ shall have a governing body composed as described in Section 30-767-212(b)(4) .412(b)(1), or shall have established an advisory committee composed as described in Sections 30-767-212(a)(4) .412(a)(1) and (2).

.422-222 Such contracts shall be subject to the provisions of Manual of Policies and Procedures Chapter 23-600.

.423-223 A consortium entering a contract under this section ~~Section 30-767-22~~ shall be deemed to be the employer of record of IHSS ~~personnel~~ providers referred to recipients as described in Section 30-767-23.43 for the purposes of collective bargaining over wages, hours and other terms and conditions of employment and matters pertaining to employer-employee relations.

.43-23 Any public authority or non-profit consortium shall provide the following minimum services:

.431-234 Provide registry services to recipients receiving services pursuant to Section 30-767-23.43.

(a) Assistance in finding providers through the establishment of a registry.

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- (b) Investigation of the qualifications and background of potential providers listed on the registry.

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- (1) Background investigations can include interviews by staff, work history, a Department of Motor Vehicles (DMV) printout, an application that requires disclosure of any felony crimes committed, local and statewide public records checks (superior courts, county web sites), etc. These methods are considered part of the public authority/nonprofit consortium's budget and are funded through State/county participation (65/35 percent) of the non-federal share of the costs.
- (2) Criminal background checks of a provider's fingerprints by the Department of Justice (DOJ) are not considered part of a background investigation. These criminal background checks are not funded with state participation of the non-federal share of the costs.

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## HANDBOOK ENDS HERE

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- ~~(c) Establishment of a referral system under which potential providers are made known to recipients.~~
- (c) Exclude any provider from its registry that has been deemed by the Department of Health Services to be ineligible to receive payment for IHSS services.
- (d) Report to Department of Social Services any provider that the Public Authority determines is not eligible to receive payment for IHSS services.

~~.432-232~~ Provide access to training for providers and recipients.

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- (a) Access to training for providers and recipients does not mean that the county or the Public Authority is under any obligation:
- (1) to provide the training directly, to pay for training provided in the community, to pay for the provider's time to attend or to accompany the recipient to training, to pay for transportation to the training, or to pay for any materials required by the training; or
- (2) to screen or be responsible for the content of any training it tells providers and/or recipients is available in the community; or

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- (3) to ensure that any provider or recipient attended/completed any training.

(b) Training for recipients shall include:

- (1) Informing recipients that recipients are not required to hire a provider that is referred to them by the public authority or nonprofit consortium. However, the recipient is required to refer such providers to the public authority or nonprofit consortium because all providers are entitled to receive similar wages, benefits, and other terms and conditions of employment.
- (2) Making recipients aware of their responsibility to manage the scheduling of providers to minimize or eliminate, if possible, the need for any provider to work overtime.

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### HANDBOOK ENDS HERE

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~~.433-233~~ Perform any other function related to the delivery of IHSS.

~~.434-234~~ Ensure that the requirements of the Personal Care Services Program pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are met.

~~.24~~ Any public authority may adopt reasonable rules and regulations for the administration of employer-employee relations.

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~~.241~~ The Employer-Employee Relations Policy for Public Authorities Delivering In-Home Supportive Services is available from the California Department of Social Services as a model for public authorities. Public authorities may adopt, reject, or modify the policy in part or in its entirety.

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### HANDBOOK ENDS HERE

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~~.44-25~~ Public authorities and consortia-nonprofit consortiums must submit cost reports and such other data as required for the Case Management, Information and Payrolling System (CMIPS). CDSS may require public authorities and nonprofit consortiums to submit information and data necessary for the Department to comply with the reporting requirements specified in Section 12301.6(o) of the Welfare and Institutions Code. CDSS shall solicit input from public authorities and nonprofit consortium and other stakeholders on the scope of information to be provided in the report required in Section 12301.6 (o).

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- .45.26 Any county that elects to provide for in-home supportive services pursuant to this section shall be responsible for any increased costs to the CMIPS attributable to such election. The Department shall collaborate with any county that elects to provide in-home supportive services pursuant to this section prior to implementing the amount of financial obligation for which the county shall be responsible.
- .46 The costs of operating a public authority or nonprofit consortium shall be funded using a Public Authority Expense Allocation, which is funded with the same sharing apportioning as IHSS services.
- .661 A Public Authority Rate consists of wages, administrative expenses, taxes and benefits.
- (a) Wages are the wages of the IP providers.
  - (b) Administrative expenses are all operating expenses incurred by the Public Authority and its staff.
  - (c) Taxes are the payroll taxes of the IP providers.
  - (d) Benefits consist of individual health benefits, which have a state sharing rate, and benefits other than health, which may have FFP share.
- .47 Procedures for establishing, adjusting, claiming and reconciling the Public Authority expenses are contained in department All-County Letters.
- .5 Any agreement between a county and an entity acting as an employer of record under W&I Section 12302.25 must contain provisions governing the following issues.
- .51 A provision must ensure that the funds appropriated by the State for wage increases for IHSS providers be used exclusively for that purpose. W&I Code Section 12302.25(g)
  - .52 A provision must exist ensuring the right of the State to audit the entity acting as employer of record under W&I Code Section 12302.25(g).
  - .53 A provision must exist ensuring the confidentiality of the personal data of recipients and providers from disclosure by the entity acting as employer of record under W&I Code Section 10850.

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.54     A provision must ensure that in any relationship with a third party, any confidential information passed by the entity acting as employer of record under W&I Code Section 12302.25(a) be protected by a confidentiality agreement signed by the third party that fully protects the confidentiality of the data as described in the W&I Code 10850 and other applicable privacy laws and regulations.

.541     Any data or records on providers and recipient must be maintained as confidential information as required under state and federal law. Government Code Section 6253.2.

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- (a)     Information about IHSS providers is confidential and not subject to public disclosure, except that copies of names, addresses and telephone numbers shall be released to an exclusive bargaining agent and to any labor organization seeking representation rights pursuant to Government Code Section 6253.2. A county or employer of record may disclose the social security numbers of IHSS providers to an exclusive employee representative if it necessary and relevant to the representation of IHSS workers.
- (b)     A recipient of an IHSS provider may request the potential provider's fingerprints from the Department of Justice for any criminal record pursuant to W&I Code Section 15660.
- (c)     Any information disclosed under this section is pursuant to MPP Division 19.

### **HANDBOOK ENDS HERE**

.55     A provision must establish the rights and duties of the parties over access to and ability to change, modify and update data relating to IHSS recipients and providers.

.56     The entity acting as employer of record under W&I Code Section 12302.25(a) shall be assured the necessary data access to allow the entity to perform all of its functions as mandated by statute, regulation and the agreement.

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.6-3 No recipient of any services specified in Section 30-757.14 or .19 shall be compelled to accept services from any specific individual, except for individuals recruited by the recipient's guardian, conservator, or, in the case of recipients who are minors, by their parents.

.61-31 For those recipients who are receiving services through the delivery methods described in .11 and .12 above, hiring preference shall be given to qualified persons recruited by the recipient to deliver services. For the purpose of this section a qualified person is one who meets the minimum requirements established by the contract agency or the County Civil Service or Merit Systems.

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### **HANDBOOK BEGINS HERE**

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.7-4 Personal Care Services Program Providers

.71 Personal Care Services Program Providers Definiton

DHS regulation Section 51181 reads:

~~Personal Care Services Provider.~~

A personal care services provider is that individual, county employee, or county contracted agency authorized by the Department of Health Services to provide personal care services to eligible beneficiaries. An individual provider shall not be a family member, which for purposes of this section means the parent of a minor child or a spouse.

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### **.5 .72 Personal Care Services Program Provider Enrollment**

DHS regulation Section 51204 reads:

~~Personal Care Services Provider.~~

All providers of personal care program services ~~must be approved by Department of Health Services and~~ shall sign the "Personal Care Program Provider/Enrollment Agreement" form [SOC 426 1/93]] designated by the Department agreeing to comply with all applicable laws and regulations governing Medi-Cal and the providing of personal care service. Beneficiaries shall be given a choice of service providers.

- (a) Individual providers will be selected by the beneficiary, by the personal representative of the beneficiary, or in the case of a minor, the legal parent or guardian. The beneficiary or the beneficiary's personal representative, or in the case of a minor, the legal parent or guardian shall certify on the provider enrollment document that the provider, in the opinion of the beneficiary, is qualified to provide personal care so long as the person signing is not the provider.
- (b) Contract agency personal care providers shall be selected in accordance with Welfare and Institutions Code Section 12302.1. The contract agency shall certify to the designated county department that the workers it employs are qualified to provide the personal care services authorized.

### **.6 .73 Provider Audit Appeals**

DHS regulation Section 51015.2 reads:

Providers of Personal Care Services Grievance and Complaints.

Notwithstanding Section 51015, when a provider of personal care services has a grievance or complaint concerning the processing or payment of money for services rendered, the following procedures must be met:

- (a) The provider shall initiate an appeal, by submitting a grievance or complaint in writing, within 90 days of the action precipitating the grievance or complaint, to the designated county department identifying the claims involved and specifically describing the disputed action or inaction regarding such claims.

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- (b) The designated county department shall acknowledge the written grievance or complaint within 15 days of its receipt.
- (c) The designated county department shall review the merits of the grievance or complaint and send a written decision of its conclusion and reasons to the provider within 30 days of the acknowledgment of the receipt of the grievance or complaint.
- (d) After following this procedure, a provider who is not satisfied with the decision by the designated county department may seek appropriate judicial remedies in compliance with Section 14104.5 of the Welfare and Institutions Code, no later than one year after receiving notice of the decision.

## **HANDBOOK ENDS HERE**

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NOTE: Authority cited: Sections 10553, 10554 and 15660, Welfare and Institutions Code; and Chapter 939, Statutes of 1992. Reference: Sections 12301.3, 12301.4, 12301.6, 12301.7, 12302, 12302.1, 12302.7, 12303.4 and 14132.95, Welfare and Institutions Code and Section 54950 et seq., Government Code.